RESOLUTION NO. 2731

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, REPEALING RESOLUTION NUMBER 2721 AND APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE HUMANE SOCIETY OF CENTRAL ARIZONA, INC., FOR FISCAL YEAR 2013-2014.

WHEREAS, the Town of Payson has contracted with Humane Society of Central Arizona, Inc. (the "Humane Society"), for the providing of an animal shelter for the Town; and

WHEREAS, on June 24, 2013, the town and the Humane Society entered into an Agreement (the "Agreement") under which the Humane Society will continue to provide an animal shelter for the Town of Payson for Fiscal Year 2013-2014; and

WHEREAS, the Town and the Humane Society agreed that the amount to be paid by the Town to the Humane Society for Fiscal Year 2013-2014 would be $75,200.00 and the monthly amount would be $6,266.67; and

WHEREAS, a scrivener's error in said Agreement mistakenly stated the annual amount to be paid by the Town to the Humane Society for Fiscal Year 2013-2014 as $88,800.00 and the monthly amount as $7,400.00; and

WHEREAS, both the Town and the Humane Society agree that the scrivener's error should be corrected; and

WHEREAS, the Mayor and Common Council desire to repeal Resolution Number 2721 and the prior Agreement with the scrivener's error and approve a corrected Agreement,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. That Resolution Number 2721, passed and adopted by the Mayor and Common Council on June 20, 2013, is hereby repealed in its entirety.

Section 2. That the corrected Agreement between the Town of Payson and the Humane Society of Central Arizona, Inc., a copy of which is attached hereto as Exhibit "A" is hereby approved in substantially the form attached.

Section 3. That Kenny J. Evans, Mayor of the Town of Payson be and is hereby authorized to execute said corrected Agreement with the Humane Society of Central Arizona, Inc., in substantially the form set forth in Exhibit "A".

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Section 4. That the Town of Payson be and is hereby authorized to take and perform such other and further actions as are necessary or appropriate to carrying out the terms of said Agreement.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this _____ day of July, 2013, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

_____
Kenny J. Evans, Mayor

ATTEST:

_____
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

_____
Timothy M. Wright, Town Attorney

EXHIBIT "A"
to Resolution No. 2731

AGREEMENT

This Agreement is made and entered into this _____ day of _____, 2013, by and between the **TOWN OF PAYSON**, 303 North Beeline Highway, Payson, Arizona, 85541, a municipal corporation, herein referred to as "Town", and **THE HUMANE SOCIETY OF CENTRAL ARIZONA, INC.**, P. O. Box 242, Payson, Arizona 85547, an Arizona non-profit corporation, herein referred to as "Society".

WHEREAS, Society desires to be of service to Town for the purpose of humane animal care; and

WHEREAS, Town desires to continue to use the services of Society for the purpose of humane animal care,

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and agreements set forth herein, the Parties agree as follows:

1. This Agreement shall be limited to the care and treatment of animals placed in the care and control of the Society by Town or by any other person or entity as delineated in Chapter 90, Animals, of the Town's Code of Ordinances ("Town Animals").

2. Society agrees to and shall follow and abide by the provisions in Chapter 90 of the Code of the Town of Payson which shall control the maintenance and disposition of animals in the custody of Society and shall apply to all operations of Society concerning Town Animals.

3. Society shall provide for rabies control facilities, spaying, neutering, adoption, care and any necessary disposal of animals placed in Society's control by anyone, in accordance with the ordinances duly enacted by Town and applicable State laws. In this connection, Society shall make no charge for and shall not seek to collect from anyone any amount for the taking in of stray animals.

4. Town shall collect all licensing fees and impound fees and retain the same for its own benefit.

5. The housing of any potbellied pig captured by the Town of Payson Animal Control Officer and/or his/her representative shall be of minimum duration to enable the Arizona Livestock Board to be notified and to act in accordance with the livestock laws of the State of Arizona. Society acknowledges having received the text of Chapter 90 of the Payson Town Code, which provides the methodology employed by Town to handle and dispose of any potbellied pig which is captured or impounded by Town.

6. Town does hereby agree to compensate the Society pursuant to this Agreement in the total amount of $75,200.00 ($6,266.67/month) for a term commencing July 1, 2013 and ending June 30, 2014.

7. Society shall keep and make available all records necessary to account for its treatment of all Town Animals and its use of Public Funds. Society's records shall be available for inspection by Town at any time during normal business hours, subsequent to twenty-four (24) hours prior notification. Said notification may be oral or written.

8. On or before the tenth day of each month, Society shall make a full accounting to Town of all public funds spent by Society for the care of Town Animals during the previous month.

9. This Agreement shall be valid and in force from July 1, 2013, through June 30, 2014. Should either Society or Town desire to terminate this Agreement before the expiration of the term hereof, such party may do so by giving thirty (30) days advance written notice to the other party. After thirty (30) days have elapsed from the date of said notice, this Agreement shall be deemed terminated and of no further force or effect.

10. This Agreement is subject to the provisions of A.R.S. § 38-511, the terms of which are incorporated herein by reference.

11. All notices and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally or sent by certified United States mail, postage prepaid, return receipt requested, if to:

The Town:	Town of Payson 303 North Beeline Highway Payson, Arizona 85541 Attention: Town Manager
The Society:	Humane Society of Central Arizona, Inc. P.O. Box 242 Payson, Arizona 85547 Attention: President

12. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by either of the Parties of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

13. This Agreement may be executed in two or more counterparts.

14. It is not intended by this Agreement to create any partnership, joint venture, or other arrangement between the Town and the Society. No term or provision of this Agreement shall be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder. The Parties understand, agree, and acknowledge that Society shall act under this Agreement solely as an independent contractor and not as an agent or employee of the Town.

15. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter of this Agreement. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are hereby superceded and merged herein.

16. This Agreement is entered into in Arizona and shall be construed and interpreted under the internal laws of the State of Arizona.

17. Any dispute arising out of or related to this Agreement may, with the written consent of both parties, be settled by submission to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, *et seq.*, and judgment upon any award rendered by the arbitrator(s) shall be entered in the Superior Court of Gila County, Arizona. The venue for any such dispute shall be Gila County, Arizona. Both parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum based upon lack of venue. Neither party shall be entitled to recover from the other party any of its attorneys' fees, costs, or expert witness fees incurred in any such dispute, controversy, claim, or cause of action, but each party shall bear its own attorneys' fees, whether the same is resolved through arbitration, litigation in a court, or otherwise.

18. Town Business License. Society shall provide the Town with a copy of its Town business license. If Society is exempt from the Town's business licensing requirements, it shall still provide the Town with the items required under Section 110.03(C)-(D) of the Payson Town Code.

19. Every payment obligation of the Town under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the Town at the end of the period for which funds are available. No liability shall accrue to the Town pursuant to this Agreement in the event this provision is exercised and the Town shall not be obligated or liable for any future payments or for any damages as a result of termination under this Section.

20. Pursuant to A.R.S. §§35-391.06 and 35-393.06, the Parties hereby warrant and represent that they do not have, nor any of their subcontractors have, and during the term of this Agreement will not have a scrutinized business operation in either Sudan or Iran.

21. Authorized Presence Requirements/Government Procurement (A.R.S. §41-4401).

    21.1 Society and any Subcontractor employed by Society warrant their compliance with all Federal immigration laws and regulations that relate to their employees and with Arizona Revised Statutes Section 23-214(A).

    21.2 A breach of the warranty under Section 21.1 above shall be deemed a material breach of this Agreement and shall be subject to penalties up to and including termination of the Agreement.

21.3 The Town retains the legal right to inspect the papers of Society or any Subcontractor who works on this Agreement to ensure that Society and Subcontractor are complying with Section 21.1.

22. The Parties agree that the June 24, 2013 Agreement containing a scrivener's error relating to the amounts to be paid by the Town to the Society is void.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day, month and year first above written.

TOWN OF PAYSON,
an Arizona municipal corporation

By_____
Kenny J. Evans, Mayor

ATTEST:

_____
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

_____
Timothy M. Wright, Town Attorney

HUMANE SOCIETY OF CENTRAL ARIZONA, INC., an Arizona corporation

By_____
Bill Enlund, President

_____
Diane Reid, Vice President

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TMW:drs July 17, 2013 (4:54pm)